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AUG 17 2004

OFFICE OF PETITIONS

In re Application of :
Gary L. Hopkins :
Application No. 10/825,276 :
Filed: April 15, 2004 :
Attorney Docket No. ST288/0ST12-U :
DECISION DISMISSING
PETITION

This is a decision on the petition filed May 17, 2004, requesting that the above-identified application be accorded a filing date of April 13, 2004, rather than the presently accorded date of April 15, 2004.

The petition is **DISMISSED**.

Any request for reconsideration of this decision should be filed within **TWO MONTHS** of the date of this decision in order to be considered timely (see 37 CFR 1.181(f)). No extensions of time pursuant to the provisions of 37 CFR 1.136 are permitted. If reconsideration is not requested within the time period specified above, this application will be forwarded to the Office of Initial Patent Examination with the presently accorded filing date of April 15, 2004.

Petitioner requests the earlier filing date on the basis that the application was purportedly deposited in Express Mail service on April 13, 2004, pursuant to the requirements of 37 CFR 1.10.

Paragraph (a) of 37 CFR 1.10 states that:

“Any correspondence received by the Patent and Trademark Office (Office) that was delivered by the “Express Mail Post Office to Addressee” service of the United States Postal Service (USPS) will be considered filed in the Office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the “date-in” on the “Express mail” mailing label or other official USPS notation. If the USPS deposit date cannot be determined, the correspondence will be accorded the Office receipt date as the filing date. See § 1.6(a).

A grantable petition under 37 CFR 1.10(d) must include "a showing which establishes, to the satisfaction of the Commissioner, that the requested filing date was the date the correspondence was deposited in Express Mail" service prior to the last scheduled pickup for that day." In addition, the showing "must be corroborated by evidence from the USPS or that came into being after deposit and within one business day of the deposit of the correspondence in the 'Express Mail' service of the USPS."

Petitioner states that the package in question was deposited on April 13, 2004 in an Express Mail receptacle before the specified pickup, but the "date-in" on the Express Mail label is incorrectly noted as April 15, 2004. In support, petitioner has provided a copy of the Express Mail label, a post card receipt, and a certificate of Express Mail under 37 CFR 1.10.

The certificate of Express Mail is not sufficient evidence by itself to establish the date of mailing. Parties who use drop boxes can protect themselves from uncertainty due to illegible mailing labels by routinely maintaining a log of "Express Mail" deposits in which notations are entered by the person who deposited the correspondence as "Express Mail" within one business day after deposit with the USPS. Evidence that came into being after deposit and within one business day after the deposit of the correspondence as "Express Mail" may be in the form of a log book which contains information such as the "Express Mail" number; the application number, attorney docket number or other such file identification number; the place, date and time of deposit; the time of the last scheduled pick-up for that date and place of deposit; the depositor's initials or signature; and the date and time of entry in the log. See MPEP 513. The corroborating evidence required by the rule does not accompany the instant petition. Petitioner has not provided a copy of a log book containing the information needed to support petitioner's allegation that the package was deposited on April 13, 2004. Additionally, no statement from the USPS has been presented in stating that any error was made by the Postal Service in the processing of petitioner's Express Mail package with a "date-in" of April 15, 2004. Applicants were made aware of the date of receipt in Express Mail acknowledged by the USPS upon return of their Express Mail receipt. It is uncertain why petitioner did not obtain a statement in writing from the USPS acknowledging an error in the processing of their Express Mail package immediately after receiving the Express Mail receipt. Moreover, a review of the USPS' "Track and Confirm" shows that the package in question was deposited with the USPS on April 15, 2004.

Upon reconsideration, a notation in a log book, entered after deposit by the person who deposited the correspondence as "Express Mail" within one business day of such deposit, setting forth the items indicated above, would be deemed to be an adequate showing of the date of deposit under 37 CFR 1.10(d)(3).

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
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Telephone inquiries concerning this matter may be directed to Marianne Morgan at (703) 306-3475.



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